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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/321,766	05/28/1999	AWADHESH K. MISHRA	28069-523	7018
<div>7590 10/07/2008</div> <div>MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, P.C.</div> <div>CHRYSLER CENTER</div> <div>666 THIRD AVENUE, 24TH FLOOR</div> <div>NEW YORK, NY 10017</div>				
<div>EXAMINER</div> <div>FAY, ZOHREH A</div>				
<div>ART UNIT</div> <div>1612</div>		<div>PAPER NUMBER</div>		
<div>MAIL DATE</div> <div>10/07/2008</div>		<div>DELIVERY MODE</div> <div>PAPER</div>		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/321,766

Applicant(s)

MISHRA, AWADHESH K.

Examiner

ZOHREH A. FAY

Art Unit

1612

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-38, 40-46, 48-54, 56, 57 and 63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-38, 40-46, 48-54, 56, 57 and 63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Claims 21-38, 40-46, 48-54, 56, 57 and 63 are presented for examination.

The remarks filed on June 23, 2008 have been received and entered.

Claims 21-38, 40-46, 48-54, 56, 57 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller et al. (US 5,858,410) in view of Anderson et al. (US 5,739,152) for the reasons set forth on pages 2-5 of the office action of January 23, 2008.

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant in his remarks argues that Muller does not teach all the limitations of the claimed invention. Applicant is reminded that the rejection is obviousness and not an anticipation rejection. Furthermore, Muller teaches a suspension of a poorly soluble or water insoluble drugs in combination with a phospholipid, such as lecithin within the claimed range concentrations, a thermoprotecting agent, such as trehalose and sorbitol, which can be autoclaved. Applicant alleges criticality to the lack of the surfactants in the claimed composition in comparison with the composition of the prior art. The claimed invention contains phospholipids, which applicant calls it "surface modifier". It is unclear if a surface modifier is a surfactant or can not be used a surfactant. Furthermore, Applicant has selected the composition of the prior art, claiming the advantages of the lack of surfactant of such composition in terms of autoclaving and sterilization. However, the prior art also teaches autoclaving as a mean for sterilization. Applicant has presented no supporting evidence to establish the unexpected or unobvious nature of the claimed

invention, and as such, claims 21-38, 40-46, 48-54, 56, 57 are properly rejected under 35 U.S.C. 103 (a).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Z.F
/Zohreh A Fay/
Primary Examiner, Art Unit 1612